

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 71-1182

RAYMOND MATTZ,
PETITIONER,

v.

G. RAYMOND ARNETT, AS DIRECTOR OF
THE DEPARTMENT OF FISH AND GAME
OF THE STATE OF CALIFORNIA,
RESPONDENT.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA, FIRST APPELLATE
DISTRICT

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CHRONOLOGICAL LIST OF RELEVANT
PLEADINGS, HEARINGS, AND ORDERS

- 3/30/70 Petition of G. Raymond Arnett
filed in Superior Court of the
State of California for the
County of Del Norte.
- 3/30/70 Notice of Hearing on petition filed.
- 4/17/70 Intervention By Way of Answer filed
by Raymond Mattz.
- 4/17/70 Order entered granting Raymond
Mattz permission to intervene
and ordering Answer filed.
- 5/1/70 Intervenor's Notice of Request
For Court To Take Judicial Notice
filed.
- 5/1/70 Intervenor's Memorandum Of Points
And Authorities In Support of
Request For Judicial Notice
filed.
- 5/14/70 Trial.
- 6/8/70 Petitioner's Argument filed.
- 6/15/70 Intervenor's Memorandlm Of Points
And Authorities filed.
- 6/22/70 Petitioner's Closing Argument
filed.

- 6/25/70 Intervenor's Supplemental Memorandum Of Points And Authorities filed.
- 7/7/70 Opinion and Decision of Superior Court filed.
- 7/10/70 Intervenor's Notice of Appeal filed.
- 7/10/70 Intervenor's Request For Findings of Fact And Conclusions of Law filed.
- 7/10/70 Order entered directing Petitioner to prepare findings of fact and conclusions of law.
- 7/17/70 Petitioner's Proposed Findings Of Fact And Conclusions Of Law Submitted.
- 7/21/70 Intervenor's Objections To Proposed Findings Of Fact And Conclusions Of Law filed.
- 8/21/70 Hearing on Proposed Findings of Fact And Conclusions Of Law
- 9/4/70 Findings of Fact And Conclusions Of Law (As Adopted) entered.
- 9/4/70 Judgment And Order entered.

10/21/71 Opinion of Court of Appeal of
the State of California, First
Appellate District, filed.

12/16/71 Order Denying Hearing filed by
Supreme Court of the State of
California.

12/27/71 Remittitur filed.

SUPERIOR COURT OF THE STATE
OF CALIFORNIA FOR THE COUNTY
OF DEL NORTE

G. RAYMOND ARNETT, as)
Director of the)
Department of Fish and)
Game of the State of)
California,)

Petitioner,)

vs.)

5 GILL NETS (white)
gill net, 70' long,)
9' mesh with lead)
line and 19 wooden)
floats; green gill)

No. 10434

PETITION

Filed March
3, 1970

net 50' long, 9")
mesh lead line and)
26 wooden floats;)
green gill net 48')
long, 6" mesh with)
lead line and 10 black)
plastic floats; white)
gill net 50' long, 9")
mesh with lead line)
and 18 plastic floats;)
beige gill net 50')
long, 6" mesh with lead)
line and 10 plastic)
floats;)
Respondent.)

TO THE SUPERIOR COURT OF THE STATE
OF CALIFORNIA FOR THE COUNTY OF DEL NORTE:

Your petitioner respectfully represents that:

(1) At all times herein mentioned, he was and now is the duly appointed, qualified and acting Director of the Department of Fish and Game of the State of California;

(2) At all times mentioned herein, said 5 gill nets, as described above, the respondent herein, were and now are appliances used for the taking and catching of

fish.

(3) On September 24, 1969, in the waters of the State of California, County of Del Norte, to wit: approximately 200 feet from the Klamath River near Brooks Riffle, Fish and Game District No. 1 1/2, said 5 gill nets the respondent herein were then and there operated, used, and maintained willfully and unlawfully in the taking and catching of fish by Raymound [s] G. Mattz (or by a certain person or persons whose identities are presently unknown to your petitioner) contrary to the provisions of sections 8686, 8664 and 8630 of the Fish and Game Code of the State of California in that said respondent net was then and there used for taking fish.

(4) Your petitioner herein, acting by and through Albert Clinton, a duly appointed, qualified, and acting fish and game warden of the Department of Fish and Game, did then and there seize and take said respondent, and said Albert Clinton has ever since kept and now has the same in his possession and under his control, and said Albert Clinton did thereupon forthwith report such seizure to your petitioner herein.

(5) * Said respondent was at all times herein mentioned and now is a public nuisance.

WHEREFORE, your petitioner prays for the judgment of this court adjudging said respondent to be a public nuisance, forfeiting [sic] the same to the State of California and ordering said respondent to be sold or destroyed in whole or in part.

DATED: February 24, 1970

THOMAS C. LYNCH, Attorney
General

RODERICK WALSTON

/s/ Roderick Walston

Deputy Attorney General

Attorneys for Petitioner

(Verification omitted in printing)

SUPERIOR COURT OF THE STATE OF
CALIFORNIA FOR THE COUNTY OF DEL NORTE

INTERVENTION BY WAY OF ANSWER

Filed April 17, 1970

(Title omitted in printing)

Comes now Raymond G. Mattz and, by leave of Court first had and obtained, intervenes in the above-captioned proceeding and in answer to the petition on file

herein denies and alleges as follows:

I

Alleges that at all times mentioned in said petition he was and now is the owner and entitled to the possession of the respondents in this case, described in the said petition and taken on the 24th day of September, 1969 in the waters of the State of California, in said County of Humboldt, to wit: approximately 200 feet from the Klamath River near Brooks Riffle.

II

Denies each and every allegation, all and singular, conjunctively, disjunctively and singularly and specifically denies the allegations that the said gill net was used or maintained unlawfully in the taking and catching of fish or contrary to the provisions of the existing statutes and laws of the State of California for the protection of fish, or in violation of Section 8664 and 8686 and 8630 of the Fish and Game Code and further specifically denies that said net was or is a public nuisance.

III

As and for a further, separate and

distinct defense to said petition, this answering intervenor alleges that:

(1) That he is a person within the provisions of Section 12300 of the Fish and Game Code and, further that under the provisions of Title 18, USCA, Section 1162 and Title 28, USCA, Section 1360, and by treaty and agreement of the United States with Indian tribes, the provisions of the Fish and Game Code are not applicable to the Intervener.

WHEREFORE, this answering Intervener prays that the petitioner take nothing by its petition and that the respondent gill nets be returned to him forthwith; for costs of suit and further relief as to the Court may seem meet and proper in the premises.

/s/ Robert J. Donovan
Attorneys for said Answering
Intervener
ROBERT J. DONOVAN

STATE OF CALIFORNIA)
COUNTY OF DEL NORTE) ss.

Raymond G. Mattz, being sworn deposes and says:

That he is the Intervener in the above entitled action; that he has read the fore-

going "Intervention by Way of Answer and knows the contents thereof; that the same is true of his own knowledge except as to those matters which are therein stated on his information or belief and as to those matters that he believes it to be true.

/s/ Raymond G. Mattz

(jurat omitted in printing)

(Declaration of service omitted in printing)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF DEL NORTE

O R D E R

Filed April 17, 1970

(Title omitted in printing)

Good cause appearing therefor, it is hereby ordered that said Raymond G. Mattz be permitted to intervene herein by filing answer to said petition. Let the within answer be filed upon proof of service of a copy thereof upon counsel for petitioner.
Dated: April 17, 1970

/s/ Frank S. Petersen
Judge of the Superior Court

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF DEL NORTE

NOTICE OF REQUEST FOR COURT TO
TAKE JUDICIAL NOTICE

Filed May 1, 1970

(Title omitted in printing)

TO THE PETITIONER AND HIS ATTORNEY:

PLEASE TAKE NOTICE that at 9:30 a.m.
on Thursday, May 14, 1970, or as soon
thereafter as this case comes to trial,
intervenor will request Judge Frank S.
Petersen of the above court to take judi-
cial notice of the following regulations
and documents:

(1) August 21, 1864, Proclamation
of Austin Wiley (Superintendent of Indian
Affairs for the State of California) loca-
ting the Hoopa Valley Reservation;

(2) June 23, 1876, Executive Order
of President U. S. Grant establishing
Hoopa Valley Indian Reservation;

(3) October 16, 1891, Executive
Order of President Benjamin Harrison
extending Hoopa Valley Reservation to the
Pacific Ocean;

(4) Letter of November 10, 1855, from
George W. Manypenny (Commissioner, Office
of Indian Affairs) to R. McClelland (Secre-

tary of the Interior);

(5) Letter of November 12, 1855, from R. McClelland to President Franklin Pierce and President Pierce's approval;

(6) Hearings on Survey of Conditions of the Indians in the United States before a Subcommittee of the Senate Committee on Indian Affairs, Part 29, California (72n Cong., 1st Sess., 1932);

* * * * *

Copies of the regulations and documents described in 1 to 7 above are attached.

Dated: April 23, 1970

GEORGE F. DUKE
RICHARD B. COLLINS, JR.
LEE J. SCLAR
ROBERT J. DONOVAN
By /s/ Robert J. Donovan
Robert J. Donovan

SURVEY OF CONDITIONS OF THE INDIANS
IN THE UNITED STATES

HEARINGS
Before a
SUBCOMMITTEE OF
THE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

SEVENTY-SECOND CONGRESS

First Session

Pursuant To

S.Res. 79 and 308 (70th Cong.), and S.Res.
263 and 416 (71st Cong.), and S.Res. 323
(72d Cong.)

A RESOLUTION DIRECTING THE COMMITTEE ON
INDIAN AFFAIRS OF THE UNITED STATES SENATE
TO MAKE A GENERAL SURVEY OF THE CONDITION
OF THE INDIANS OF THE UNITED STATES CON-
TINUING UNTIL THE END OF THE REGULAR SES-
SION OF THE SEVENTY-THIRD CONGRESS SENATE
RESOLUTION NUMBERED 70 AUTHORIZING A
GENERAL SURVEY OF INDIAN CONDITIONS

Part 29

California

Printed for the use of the
Committee on Indian Affairs

UNITED STATES

GOVERNMENT PRINTING OFFICE

WASHINGTON: 1934

26465

SURVEY OF CONDITIONS OF THE INDIANS IN THE
UNITED STATES

Saturday, September 24, 1932

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON
INDIAN AFFAIRS

Hoopa Indian Reservation, Hoopa, Calif.

The hearing was called to order at 8 o'clock p.m., Hon. Lynn J. Frazier presiding.

Present: Senators Frazier, Wheeler, and Thomas of Oklahoma.

Present also. Albert A. Grorud, special assistant to the subcommittee; F. H. Daiker, of the Indian Bureau; Mrs. Rheba C. Splivalo, director of the social welfare department and representing Governor James C. Rolph, Jr., of California; O. M. Boggess, superintendent of the Hoopa Indian Agency; Edward Swengel, day school representative, and L. C. Mueller, special officer at large.

* * * * *

STATEMENT OF O.M. BOGGESS

(The witness was duly sworn by Senator Frazier.)

Senator Frazier. How long have you been here as superintendent, Mr. Boggess?

Mr. Boggess. I was here 2 years in May of this year.

Senator Frazier. How long have you been in the Indian Service?

Mr. Boggess. Twenty-five years.

Senator Frazier. How long as superintendent?

Mr. Boggess. Twelve years.

Senator Frazier. How large a reservation have you here?

Mr. Boggess. You refer to this reservation or to the entire jurisdiction?

Senator Frazier. This reservation.

Mr. Boggess. This reservation is 12 miles square and then there is an extension 1 mile on each side for an additional 50 miles down the Klamath River to the east [sic] coast.

Senator Frazier. Is it all connected?

Mr. Boggess. Yes; and it is all classed by the Indian Office as one reservation.

Senator Frazier. What do they call this reservation?

Mr. Boggess. They call it the Hoopa, and the mile strips they call the Klamath.

Senator Frazier. That is down the Klamath River?

Mr. Boggess. The Trinity River flows into the Klamath at the north boundary of the reservation.

Senator Frazier. Then what other groups of Indians are in your jurisdiction?

Mr. Boggess. I have four counties, Del Norte, Siskiyou, Trinity, and Humboldt.

Senator Frazier. And about what is the total number of Indians under your jurisdiction?

Mr. Boggess. About 3,500.

Senator Frazier. What bands are represented in that 3,500--the larger ones?

Mr. Boggess. We classify the coast Indians all under the designation of Coast Indians; that is, from Smith River to the southern part of Humboldt County.

Senator Frazier. That is not a tribal name?

Mr. Boggess. No; but we classify them as coast Indians, and then there is the Upper Klamath Indians and the Lower Klamath Indians, the Hoopa Indian, and the Upper Trinity. Those are the classifications we give them.

Senator Frazier. The Hoopa Indians live in this valley?

Mr. Boggess. Yes.

Senator Frazier. How many of the Hoopa Indians are there?

Mr. Boggess. I would say approximately 400.

Senator Frazier. What about the general condition as to the financial situation?

Mr. Boggess. Well, everyone is hard up during the depression. They have not been able to get good prices for any of their products. They have been helped out somewhat on account of road employment or the Federal-aid project that is being built on the reservation.

Senator Frazier. Do they have allotments in this valley?

Mr. Boggess. Yes; there are allotments on the Hoopa and allotments on the Klamath.

Senator Frazier. Individual allotments?

Mr. Boggess. Yes; and then out on the coast there are quite a few public domain allotments.

* * * * *

CALIFORNIA.

Hoopa Valley Reserv.

[Occupied by Hunsatung, Hupa, Klamath River, Miskeet, Redwood, Sainz, Sermolton, and Tishlanaton tribes; area, 155 square miles; established by act of April 8, 1864 (13 Stat., 39), and Executive orders.]

By virtue of power vested in me by an act of Congress approved April 8, 1864, and and acting under instructions from the Interior Department, dated at Washington City, D. C., April 26, 1864, concerning the location of four tracts of land for Indian reservations in the State of California. I do hereby proclaim and make known to all concerned that I have this day located an Indian reservation, to be known and called by the name and title of the Hoopa Valley Reservation, said reservation, being situated on the Trinity River, in Klamath County, California, to be described by such metes and bounds as may hereafter be established by order of the Interior Department, subject to the approval of the President of the United States. Settlers in Hoopa Valley are hereby notified not to make any further improvements upon their places, as they will be appraised and purchased as soon as the Interior Department may direct.

Austin Wiley,
Superintendent Indian Affairs for the
State of California. Fort Gaston, Cal.,
August 21, 1864.

EXECUTIVE MANSION,

June 23, 1876

It is hereby ordered that the south and west boundaries and that portion of the north boundary west of Trinity River surveyed, in 1875, by C. T. Bissel, and the courses and distances of the east boundary, and that portion of the north boundary east of Trinity River reported but not surveyed by him, viz: "Beginning at the southeast corner of the reservation at a post set in mound of rocks, marked 'H.V.R., No. 3'; thence south $17\frac{1}{2}$ degrees west, 905.15 chains, to southeast corner of reservation; thence south $72\frac{1}{2}$ degrees west, 480 chains, to the mouth of Trinity River." be, and hereby are, declared to be the exterior boundaries of Hoopa Valley Indian Reservation, and the land embraced therein, an area of 89,572.43 acres, be, and hereby is, withdrawn from public sale, and set apart for Indian purposes, as one of the Indian reservations authorized to

be set apart, in California, by act of Congress approved April 8, 1864. (13 Stats., p.39.)

U. S. Grant.

EXECUTIVE MANSION,

October 16, 1891.

It is hereby ordered that the limits of the Hoopa Valley Reservation in the state of California, a reservation duly set apart for Indian purposes, as one of the Indian reservations authorized to be set apart, in said State, by Act of Congress approved April 8, 1864, (13 Stats., 39), be and the same are hereby extended so as to include a tract of country one mile in width on each side of the Klamath River, and extending from the present limits of the said Hoopa Valley reservation to the Pacific Ocean; Provided, however, That any tract or tracts included within the above described boundaries to which valid rights have attached under the laws of the United States are hereby excluded from the reservation as hereby extended.

Benj. Harrison.

PART III. EXECUTIVE ORDERS
RELATING TO RESERVES

Klamath River Reserve.

Department of the Interior
Office of Indian Affairs.

November 10, 1855.

SIR: Referring to your communication of the 8th of August last to the Acting Commissioner of Indian Affairs, advising him of the approval by the President of the United States of the recommendation of the Department that it was expedient to expend the money appropriated on the 3rd of March last for removing the Indians in California to two additional military reservations, I have the honor now to make the following report:

On the 15th of August last the Acting Commissioner inclosed a copy of your letter of the 8th of that month to the superintendent of Indian affairs in California, with directions to select these reservations from such "tracts of land adapted as to soil, climate, water privileges, and timber, to the comfortable and permanent accommodation of the Indians, which tracts should be uncumbered by old Spanish grants or claims of recent white settlers," limiting the dimensions of the reserves to within 25,000 acres each, and to report to this office a descrip-

tion of their geographical position in relation to streams, mountain ranges, and county lines, etc., and indicating the same upon a map. A copy of that letter is herewith, marked A. By the last mail from California, I have received from Superintendent Thomas I. Henley a report upon this subject, dated the 4th ultimo (a copy of which is herewith, marked B), by which it appears he recommends as one of the reservations aforesaid "a strip of territory one mile in width on each side of the (Klamath) river, for a distance of 20 miles." The superintendent remarks upon the character of the country selected, and incloses an extract from a report (also herewith, marked C) to him of the 19th of June last, by Mr. S. G. Whipple, which contains in some detail a description of the country selected, habits and usages of the Indians, etc., but no map is furnished.

It will be observed from this report of the superintendent that he has deemed it important to continue the employ of an agent and to prepare for raising a crop in order to assure the Indians of the good faith of the Government and to preserve the peace of the country. Considering the great distance of this reserve from the seat of

Government and the length of time it necessarily requires to communicate with an agency at the Klamath, it is desirable that some definite action be taken, if practicable, before the sailing of the next steamer, to leave New York on the 20th instant.

I, therefore, beg leave to ask your attention to the subject, and if you shall be of the opinion from the representations made by the superintendent in California and Mr. Whipple that the selection at the mouth of the Klamath River is a judicious and proper one, that it be laid before the President of the United States for his approval, but with the provision, however, that upon a survey of the tract selected that a sufficient quantity be cut off from the upper end of the proposed reserve to bring it within the limitation of 25,000 acres, authorized by the act of 3d March last.

I also inclose herewith a copy of another letter from Superintendent Henley, of 4th ultimo (marked D), in which he states, in relation to the other reserve, that it is intended to locate it "between the headwaters of Russian River and Cape Mendocino." In reference to both of these proposed reserves, and as connected with the means to

be used to maintain peaceable [sic] relations with the Indians, the superintendent is of opinion that it is of great importance to provide for crops, and that to do so an agent in each instance is necessary. As this last-named selection has not been defined by any specific boundaries, and no sufficient description is given as to soil, climate, and suitableness for Indian purposes, to enable the Department to determine the matter understandingly, of course nothing definite can now be done. But it may not be improper to consider the subject in connection with the general intent as to the particular locality in which it is proposed to make the location.

The reserve proposed on the Klamath River and Pacific coast does not appear from the map of the State of California to be very far removed from Cape Mendocino, or a point between that and Russian River; and as provision is made only for two reserves in the State other than those already in operation, the question arises whether it should not be situated farther in the interior, or perhaps eastern part of the State, than the point referred to. The Noome Lacke Reserve is situated in one of the Sacramento valleys, at

about the latitude of 40 degrees north and 122 degrees of longitude west, about the center of that portion of the State north of the port of San Francisco. As, therefore, the proposed Klamath Reserve, being northwest from the Noome Lacke Reservation, would appear to be adapted to the convenient use of the Indians in that direction, the question is suggested whether the other reserve should not be located farther east and north, say on the tributaries of either Pitt or Feather Rivers. As in the case of the proposed reserve of the Klamath, I am desirous of obtaining your opinion and that of the President of the United States, with such decision as may be arrived at under the circumstances, in season to communicate the same by the next California mail, for the government of the action of superintendent Henley.

Very respectfully, your obedient servant,

Geo. W. Manypenny,
Commissioner.

Hon. R. McClelland,
Secretary of the Interior

Department of the Interior
Washington, D. C.
November 12, 1855

Sir: I have the honor to submit herewith the report from the Commissioner of Indian Affairs of the 10th instant, and its accompanying papers, having relation to two of the reservations in California for Indian purposes, authorized by the act of 3d March last.

The precise limits of but one of the reservations, viz, a strip of territory commencing at the Pacific Ocean and extending 1 mile in width on each side of the Klamath River, are given, no sufficient data being furnished to justify any definite action on the other.

I recommend your approval of the proposed Klamath Reservation, with the provision, however, that upon a survey of the tract a sufficient quantity be cut off from the upper end thereof to bring it within the limit of 25,000 acres authorized by law.

Respectfully, your obedient servant

R. McClelland,

Secretary.

The President.

Let the reservation be made, as proposed.

Franklin Pierce.

November 16, 1855

* * * * *

(Declaration of Service omitted in printing)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF DEL NORTE

Reporter's Transcript on Appeal [of trial
(May 14, 1970)]

(Title omitted in printing)

APPEARANCES

For the Petitioner:	For the Intervenor:
RONALD V. THUNEN, JR.	ROBERT J. DONOVAN

* * * * *

[12] MR. THUNEN: In that case, Your Honor, I would request that judicial notice be taken of these certified copies of deeds in the Recorder's Office here in Del Norte County. The first deed, which is recorded in Book 12, 388, of the Official Records of Del Norte County, indicates that on December 19, 1955, Frederick S. Strong and others granted to the Simpson Logging Company certain property described as "In Township 13 North, Range 2 East, Humboldt Meridian, in Section 33, Lots 3 and 6."

[13] The second document, as recorded on page 71 of Book 62 of the Official

Records, recites that on December 24, 1959, Harold Lee Ward, a widower, Virginia Palmer Ward and others conveyed by warranty deed to the Simpson Redwood Company Lot 2 of Section 33, Township 13 North, Range 2 East, Humboldt Meridian.

THE COURT: All right, these two deeds will be received into evidence.

* * * * *

[TESTIMONY OF WALTER L. GRAY]

[22] Q. [Mr. Thunen] Now, in the period in excess of thirty years which you have been associated with the Department of Fish and Game in this area, have you acquired any knowledge as to the effect of gill nets on the salmon population?

A. My observations have been that there is considerable take by these nets of salmon.

Q. I see. And does this have any effect on the salmon population, say, for future seasons?

A. In all probability.

THE COURT: "I can't see how that is german [sic] to this case.

MR. DONOVAN: I am willing to let it in, but it is totally irrelevant.

[23] THE COURT: If they are illegal, it's an illegal place to have them, if this is not on an Indian Reservation, that is what we are interested in.

MR. THUNEN: All right, Your Honor, I will accept that and proceed to another question.

THE COURT: I will take judicial notice that man is very harmful to salmon, particularly the white man.

MR. THUNEN: The Court will take judicial notice of the fact that gill nets are particularly harmful to salmon?

THE COURT: They are. They are illegal.

* * * * *

[TESTIMONY OF GENEVA MATTZ]

[34] GENEVA MATTS [sic],

called as a witness by the respondent, having first been sworn, was examined and testified as follows:

THE CLERK: State your name and residence.

THE WITNESS: Geneva Matts, 84 Lauff Avenue, Crescent City.

DIRECT EXAMINATION

[35] BY MR. DONOVAN:

Q. Mrs. Mattz, what is your relation-

ship to Raymond Matts, the intervenor here?

A. He is my son.

Q. I see. What is the extent of -- would you state to the Court the extent of your Klamath River or Yurok Indian blood?

A. I am a full-blooded Yurok Indian.

Q. Would you state your relationship to Susie Brooks?

A. Susie Brooks was my grandmother.

Q. And do you own title and trust for the Susie Brooks allotment?

A. Yes.

* * * * *

[38] Q. (By Mr. Donovan) Now, the Susie Brooks allotment, is that very close to the McCovey Ranch that was referred to?

A. Yes. We are next to McCovey's and Simpson's land. We go -- we run up the river and across the river.

Q. It's right next to the river?

A. Yes, uh-huh.

Q. That is near Brooks Riffle?

A. Yes.

Q. Do you know how Brooks Riffle got its name?

A. After my grandfather.

Q. Who was that?

A. William Brooks.

Q. Okay. How long have you and your family lived there, either full- or part-time used that area?

A. I moved there I think it's in '38 to live there, I had a home there.

Q. Had you lived there as a child?

A. Yes, off and on, when we planted our garden.

Q. And that goes back a few years?

A. Yes.

Q. When you lived there did you ever fish in the river?

A. Yes. Grandpa did. They used nets to net the fish for the smokehouse.

[39] Q. A gill net?

A. Yes, a gill net. And smaller fish like candlefish, they used a dip net because it was smaller. And eels, they used a trigger net, it was a long net for eels. That's what I can remember.

Q. So all your life people have been fishing in and around there?

A. Yes.

Q. Do you remember other Indians besides your family fishing around there?

A. Yes. The men always had -- the

men always had a little place they always fished, where all the Indians come and fished.

* * * * *

[TESTIMONY OF RAYMOND MATTZ]

[43] BY MR. DONOVAN:

Q. Mr. Matts [sic], what -- since your mother is a full-blooded Klamath River Indian, what is the full extent of your Klamath blood? Yurok and Klamath River, I believe the terms are used interchangeably.

A. I believe a little over half.

Q. You heard Mr. Clinton describe certain nets seized on September 24th, 1969; do you recall anything about those nets?

A. Yes. We was going up to fish, and when we went up to check the nets, to get the nets, they were gone. But before that they came over to the river bar and they placed us all under arrest for gill nets, and we says, "We haven't gill netted yet." And they went out and looked in the water to see if we had a net out in the water. So they left then

after that and they picked up the nets then. I suppose they were up on a bank.

Q. And the five nets described by Officer Clinton were your nets?

A. Yes.

Q. Did you tell the officer that they were your nets?

A. Yes.

[44] Q. And he refused to give them to you. Did you have any conversation there about the right to take the nets?

A. Yes. I told them they didn't have any right to pick the nets up because they wasn't even in the water. We wasn't even fishing with them when they picked them up.

Q. Do you consider the Klamath River to be Indian country?

A. Yes.

Q. And have you been -- did you ever go fishing up there up along that area?

A. Yes.

Q. For how long a period of time?

A. Oh, since I have been about 9 years old.

Q. Did you ever use gill nets?

A. Yes.

Q. For how long a period of time?

A. Since I have been about 9 years old.

Q. The same type of nets, generally?

A. Yes.

MR. DONOVAN: I believe that's all,
Your Honor.

THE COURT: Cross-examine.

CROSS-EXAMINATION

BY MR. THUNEN:

* * * * *

[45] Q. *** Where were you at the time -- or where were your nets at the time that Warden Clinton and Warden McClain found them?

A. They were about 20 yards up on the bank, up on the beach.

[46] Q. Were they on your mother's property?

A. Well, you can't tell, hardly, now where the river changed so much after the '64 flood.

Q. So you don't know whether you were on ----

A. (Int'g.) I know I was right by Brooks Riffle there.

Q. But you don't know whether the nets were on your mother's property or not?

A. No, I don't.

* * * * *

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF DEL NORTE
MEMORANDUM OF POINTS AND AUTHORITIES
Filed June 15, 1970
(Title omitted in printing)

* * * * *

[Exhibit A]

84

[BULL 78
KROEBER]

BUREAU OF AMERICAN ETHNOLOGY
[HANDBOOK OF INDIANS OF CALIFORNIA]

FOOD

The Yurok and their neighbors ate very largely of the acorn, the staple food of most Californians; but fish, that is, salmon, constituted a greater proportion of their food than was usual elsewhere. Small game is sufficiently scarce in their territory to make the taking of salmon much more profitable,

ordinarily. Deer were abundant and their flesh esteemed, but seem hardly to have formed part of the daily food supply. Bulbs were dug in early summer; seeds were beaten off the open prairies on the ridges. Some varieties of the latter were eaten crushed and parched but uncooked, and were much relished for their flavor. Salt was furnished by a seaweed, *Porphyra perforata*, which was dried in round blackish cakes. The people on the coast secured quantities of the large ocean mussel, whose shells make up a large part of the soil of their villages. The stranding of a whale was always a great occasion, sometimes productive of quarrels. The Yurok prized its flesh above all other food, and carried dried slabs of the meat inland, but never attempted to hunt the animal. Surf fish were the principal species taken along the ocean; there is practically no record of fishermen going out in boats. The myths speak of canoe excursions only for mussels or sea lions. The food supply was unusually ample along both coast and river, and the Yurok ordinarily did not have to condescend to the grasshoppers, angle-worms, and yellow-jacket

larvae whose nourishing qualities other tribes of the State exploited. In time of stress, of course, they fell back on almost anything. The large yellow slug of California, which in the damp northwest grows to enormous size, would then be used. Famines are scarcely alluded to in the myths, but must have occurred, as among every people primarily dependent on one seasonal or migratory animal. The average Californian clearly passed most of his life on a much closer food margin than the Yurok, but the minuteness and variety of his diet seem usually to have saved him from dire extremity.

All reptiles and dogs were considered extremely poisonous by the Yurok.

The old custom was to eat only two meals a day and theory made these sparing. Only a poor fellow without control would glut himself, and such a man would always be thriftless. Most men at least attempted to do their day's labor, or much of it, before breakfast, which came late. Some old men still profess to be unable to work properly after they have eaten. The evening meal came toward sunset.

FISH AND GAME

Salmon begin running in the Klamath in spring and in autumn. These are the periods of all the great ceremonies, whether or not these refer directly to fish. The river carries so much water, however--more than any California drainage system except the Sacramento-San Joaquin--that there is scarcely a month in the year when some variety of salmon can not be taken. It may be added that the stream is of undiminished volume up to practically the head of the stretch of Yurok ownership. Fish were taken with dip nets, seines, set gill nets, and harpoons, but of these devices the first was the most usual.

The dip net, or lifting net, as it may be called to distinguish it from a smaller instrument on an oval frame occasionally used by the Karok and other tribes to scoop boiling riffles and rapids (Pl. 6), was let down from a scaffolding built out over the water, almost invariably at some eddy or backwater. Here the fisherman sat on a block or little stool, holding the bone button of the string which closed the entrance to the pyramidal net

stretched out in the current. This net was hung from the bottom of a long A-shaped frame with a bottom crossbar. The whole was hauled out as soon as a pull on the cord had inclosed a salmon, which was then struck on the head with a club. A single night's vigil sometimes produced a hundred salmon, it is stated--a winter's supply, as the Yurok say. At other times a man will sit for half a day without a stir. The old men are much inclined to this pursuit, which would be trying to our restless patience, but gives them opportunity for undisturbed meditation or dreaming or mental idleness along with a sense of profitable occupation. (Pls. 4, 7.)

Lampreys, customarily known as eels, much prized by the Yurok for their rich greasiness, also ascend the river in great numbers, and sturgeon are not rare. Both species are taken much like the salmon, though of course with a different mesh. In the lower river eelpots were also set. Trout in the affluent creeks are too small to be much considered by a people frequently netting 20-pound salmon.

Both salmon and lampreys were split for drying--the former with a wooden handled knife (Pl. 16) of "whale-colored" flint, as the Yurok called it; the latter with a bone awl. A steel knife probably involves a different and perhaps a more precise handling, so that until a few years ago the old women clung to the aboriginal tools. Most of the fish was somewhat smoked and put away in old baskets as strips or slabs. The pulverized form convenient for packing, known also on the Columbia, was probably more prevalent among interior and less-settled tribes like the Shasta. Surf fish were often only sun dried whole and kept hung from poles in rows. They make a palatable food in this condition. Dried salmon is very hard and nearly tasteless, but rather satisfying and, of course, highly nourishing.

A long net was sometimes set for sturgeon. One that was measured had a 6-inch mesh, a width of 3 feet, and a length of 85 feet, but in use was doubled to half the length and double the width.

A measured salmon seine had a scant 3-inch mesh, a width of 3 1/2

feet, and a length of over 60 feet.

Nets were made of a splendid two-ply cordage rolled without tools from fibers of the *Iris macrosiphon* leaf. The gathering of the leaves and extraction of two fine silky fibers from each by means of an artificial thumb-nail of mussel shell was the work of women. The string was usually twisted and the nets always knotted by men. The mesh spacer and netting shuttles were of elk antler; net weights were grooved, pierced, or naturally perforated stones.

* * * * *

[Exhibit B]

HANDBOOK OF THE INDIANS OF CALIFORNIA.

By A. L. Kroeber

Chapter 1.

THE YU'ROK: LAND AND CIVILIZATION.

Quality of civilization, 1; radius and focus of the civilization, 5; towns, 8; town names, 10; organizations of towns, 11; political and national sense, 13; directions, 15; population, 16.

This history begins with an account of the Yurok, a nation resident on the lower Klamath River, near and along the Pacific Ocean, in extreme northern California (Pl. 1), surrounded by peoples speaking diverse languages but following the same remarkable civilization. The complete aspect of this civilization is un-Californian. It is at bottom the southernmost manifestation of that great and distinctive culture the main elements of which are common to all the peoples of the Pacific coast from Oregon to Alaska; is heavily tinctured with locally developed concepts and institutions; and further altered by some absorption of ideas from those tribes to the south and east who constitute the true California of the ethnologist.

This civilization, which will hereafter be designated as that of northwestern California, attains on the whole to a higher level, as it is customary to estimate such averaged values, than any other that flourished in what is now the State of California. But it is better described as an unusually specialized culture, for the things in which it is

deficient it lacks totally; and these are numerous and notable.

* * * * *

TOWNS

The territory of the Yurok, small as is its extent, is very unrepresentative of their actual life, since all of their habitations stood either on the Klamath River or on the shore of the ocean. All land back in the hills away from the houses served only for hunting deer, picking up acorns, beating in seeds, and gathering firewood or sweat-house kindlings, according to its vegetation. The most productive tracts were owned privately. They were occasionally camped on, though never for long periods. All true settlements formed only a long winding lane; and along this waterway Yurok life was lived.

The towns--hamlets is an exacter term according to civilized standards--numbered about 54 and are shown in Figure 1. A few of these such as Kenekpul, Tsetskwi, Himetl, Keihkem, Nagetl, Tlemekwetl, and some on the coast, may have been inhabited only from time to time, during the life-

time of a single man or a group of relatives. The Klamath villages mostly lie on ancient river terraces, which gradually decrease in height toward the mouth of the widening stream. Wahsekw is 200 feet up, Kenek 100, Kepel 75, Ko'otep 35, Turip 25, Wohkel 20. The coast towns are almost invariably either on a lagoon or at the mouth of a stream. Tsurau alone overlooks a cove well sheltered behind Trinidad Head. Like the more wholly ocean-situated Wiyot and Tolowa, the Yurok did not hesitate to paddle out into open salt water for miles, if there was occasion; but their habits were formed on the river or still water. The canoe

[Figure 1 on next page]

was designed for stream use rather than launching through the surf; and the coast itself was designated as downstream and upstream according as it extended north or south. Fishing was done at the mouths of running fresh water, or by men standing at the edge of the surf, much more than on the abounding ocean.

* * * * *

(Declaration of service omitted in printing)

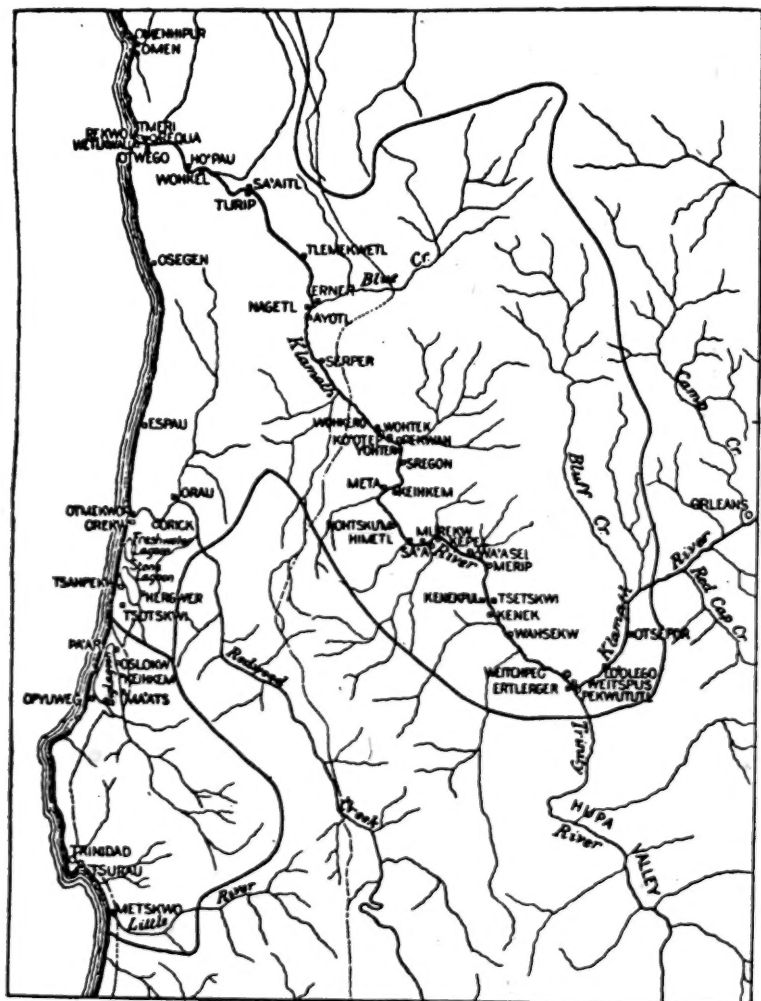


FIG. 1.—Yurok towns and territory. Solid squares indicate sites occupied only during certain periods. Dotted line, redwood timber belt.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF DEL NORTE

OPINION AND DECISION

Filed July 7, 1970

This opinion is at pages 1 and 2 of
Appendix B of the Petition For A Writ of
Certiorari.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF DEL NORTE

FINDINGS OF FACT AND CONCLUSIONS OF LAW
(AS ADOPTED)

Filed September 4, 1970

These findings and conclusions are at
pages 3-5 of Appendix B of the Petition
For A Writ of Certiorari.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF DEL NORTE

JUDGMENT AND ORDER

Filed September 4, 1970

This judgment and order is at pages
6-8 of Appendix B of the Petition For A
Writ of Certiorari.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION FOUR

OPINION

October 21, 1971

This opinion is Appendix A of the
Petition For A Writ of Certiorari.

SUPREME COURT OF THE STATE OF CALIFORNIA

ORDER DENYING HEARING

Filed December 16, 1971

This order is Appendix C of the
Petition For A Writ of Certiorari.

Supreme Court of the United States

No. 71-1182

Raymond Mattz,

Petitioner,

v.

G. Raymond Arnett, etc.

ORDER ALLOWING CERTIORARI. Filed January 15, 1973.

The petition herein for a writ of certiorari to the Court of Appeal of the State of California, First Appellate District, is granted.